

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**DEC 02 2005**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

DIANE Y. GHIRARDO, on behalf of  
herself and the general public,

Plaintiff - Appellant,

V.

UNIVERSITY OF SOUTHERN  
CALIFORNIA,

Defendant - Appellee.

No. 04-55430

D.C. No. CV-02-05506-NM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Nora M. Manella, District Judge, Presiding

Argued and Submitted November 16, 2005  
Pasadena, California

Before: BRIGHT<sup>\*\*</sup>, B. FLETCHER, and SILVERMAN, Circuit Judges.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Honorable Myron H. Bright, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

Appellant Diane Ghirardo appeals the district court’s grant of summary judgment in favor of the University of Southern California (“USC”) on her state and federal claims under the state and federal Equal Pay Acts, and state and federal claims of sex discrimination and retaliation after Ghirardo filed a charge with the Equal Employment and Opportunity Commission (“EEOC”). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

*A. Equal Pay Claims*

We agree with the district court that Ghirardo failed to show that her *total* compensation was less than the average total compensation earned by her male colleagues who perform substantially equal work. A comparison of *annual raises* does not satisfy the Equal Pay Act inquiry, which compares “wages,” defined to include “all payments” made to the employee “as remuneration for employment,” and “all forms of compensation.” 29 C.F.R. § 1620.10, *see also Hein v. Oregon Coll. of Educ.*, 718 F.2d 910, 916 (9th Cir. 1983).

*B. Retaliation*

Likewise, we agree with the district court that Ghirardo failed to make a prima facie case of retaliation because she did not establish the necessary causal link between Ghirardo’s protected activity—filing a claim with EEOC in May 2000—and the alleged adverse employment action—reduced annual raises in the

years subsequent to the charge. *See Stegall v. Citadel Broad. Co.*, 350 F.3d 1061, 1065-66 (9th Cir. 2004) (requiring showing of protected activity, adverse employment action, and causal link to establish prima facie case of retaliation).

The record shows that Ghirardo received consistently low annual raises before she filed the EEOC charge in May 2000, as well as after. Ghirardo failed to establish that the low raises after May 2000 were the result of retaliation against her for filing the charge.

### *C. Sex Discrimination*

The district court ruled that Ghirardo established a prima facie case for sex discrimination but that she failed to rebut USC's nondiscriminatory reasons for her reduced salary. We agree that Ghirardo failed to come forward with evidence that USC was motivated by discriminatory bias in the calculation of her annual raises. Her 1997 raise was zeroed-out by the dean after a finding by the USC grievance board that she engaged in misconduct. These facts do not give rise to an inference of bias. As for her poor raises in subsequent years, Ghirardo again failed to establish discriminatory animus. Dean Timme was within his discretion to take into account Ghirardo's undisputed failure to attend retreats, refusals to meet with him personally, and other instances of recalcitrance. In an effort to show pretext, Ghirardo relies on various statements allegedly made by Professors Dimster and

Morland, members of the Executive Committee (“EXCOM”), which determines the initial ratings upon which each professor’s annual salary is based. We agree with the district court that these statements do not raise a triable issue. They are isolated, remote in time, and carry virtually no probative significance. Her allegation of bias in EXCOM is simply not supported by the record. Therefore, we affirm the district court’s order granting summary judgment to USC on Ghirardo’s state and federal claims of sex discrimination.

#### *D. Other Claims*

The record supports the district court’s ruling that the testimony of Ghirardo’s experts was too attenuated from the actual process used by USC to evaluate Ghirardo to be probative of USC’s discriminatory bias. We agree with the district court that Dr. Gorman’s study was unreliable because it contained serious design flaws. Likewise, the district court did not abuse its discretion in declining to disregard Ghirardo’s own deposition testimony. Finally, USC’s routine destruction of EXCOM ratings sheets prior to 2003 pursuant to its policy does not give rise to the inference of bad faith on the part of USC. *Cf. William T. Thompson Co. v. Gen. Nutrition Corp.*, 593 F.Supp. 1443, 1454 (C.D. Cal. 1984) (finding defendants acted in bad faith by destroying relevant documents *after* commencement of litigation and in violation of two court orders).

AFFIRMED.